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**BEFORE THE ARIZONA CORPORATION COMMISSION****COMMISSIONERS**

Arizona Corporation Commission

**DOCKETED**

ROBERT "BOB" BURNS – Chairman  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON  
LEA MÁRQUEZ PETERSON

FEB 06 2020

DOCKETED BY

In the matter of:

DOCKET NO. S-21021A-17-0256

WILLIAM AUSTIN BAILEY (CRD# 1085215), a  
single man, and

ASSOCIATED PROFESSIONAL INVESTMENTS,  
LLC (CRD# 148986), an Arizona limited liability  
company,

DECISION NO. 77542

Respondents.

**OPINION AND ORDER**

DATE OF HEARING:

November 14, 2018

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Brian D. Schneider

APPEARANCES:

Mr. Mark D. Chester, CHESTER & SHEIN, P.C., on  
behalf of Respondents; and

Mr. Christopher Nichols, Staff Attorney, on behalf of the  
Securities Division of the Arizona Corporation  
Commission.

**BY THE COMMISSION:****I. Procedural History**

On August 17, 2017, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed its Notice of Opportunity for Hearing Regarding Proposed Order of Revocation ("Notice") against William Austin Bailey ("Bailey") and Associated Professional Investments, LLC ("API") (collectively "Respondents"), alleging that under the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act"), grounds exist for the revocation of Bailey's license as an investment adviser representative and API's license as an investment adviser.

On August 23, 2017, Respondents filed a Request for Hearing pursuant to Arizona Administrative Code ("A.A.C.") R14-4-306.

1 On August 30, 2017, by Procedural Order, a pre-hearing conference was scheduled for  
2 September 7, 2017.

3 On September 6, 2017, Respondents filed their Request that Pre-Hearing Conference be  
4 Postponed, and the Division filed a Response stating it does not object to Respondents' request.

5 On September 8, 2017, by Procedural Order, a pre-hearing conference was scheduled for  
6 October 25, 2017.

7 On September 14, 2017, Respondents filed their Answer and Separate Statement of Undisputed  
8 Facts.

9 On October 25, 2017, the pre-hearing conference was held as scheduled. The Division appeared  
10 through counsel. Respondents did not appear. The scheduling of a hearing was discussed.

11 On October 27, 2017, by Procedural Order, a hearing was scheduled for April 17, 2018.

12 On April 12, 2018, the Division filed a Notice of Communications from Respondent Requesting  
13 Continuance of Hearing, stating that on April 10, 2018, Bailey left two voicemails requesting a  
14 continuance of the hearing, of at least 60 days, because he has been suffering from a medical condition  
15 and is currently in a rehabilitation center. The Division further stated several unsuccessful attempts  
16 were made to contact Bailey.

17 On April 12, 2018, by Procedural Order, the hearing scheduled for April 17, 2018, was vacated  
18 and a status conference was scheduled for April 17, 2018.

19 On April 17, 2018, the status conference was held as scheduled. The Division appeared through  
20 counsel. Respondents did not appear. The scheduling of a hearing was discussed.

21 On May 1, 2018, by Procedural Order, a hearing was scheduled for July 31, 2018, and other  
22 procedural deadlines were set.

23 On July 25, 2018, Mark D. Chester filed a Notice of Appearance on behalf of Respondents, and  
24 Respondents filed an Unopposed Motion to Continue Hearing and Request for a Prehearing  
25 Conference. Respondents requested a continuance because, among other reasons, they had recently  
26 retained counsel.

27 On July 26, 2018, by Procedural Order, the hearing scheduled for July 31, 2018, was vacated  
28 and a status conference was scheduled for July 31, 2018.

1 On July 31, 2018, the status conference was held as scheduled. The Division and Respondents  
2 appeared through counsel. The scheduling of a hearing was discussed.

3 On August 1, 2018, by Procedural Order, a hearing was scheduled for November 14, 2018.

4 On October 17, 2018, Respondents filed their List of Witnesses and Exhibits.

5 On November 14, 2018, the hearing was held as scheduled. The Division and Respondents  
6 appeared through counsel. At the end of the proceeding, the matter was taken under advisement  
7 pending the submission of closing briefs.

8 On November 16, 2018, by Procedural Order, a briefing schedule was issued.

9 On January 4, 2019, the Division filed its Post-Hearing Brief.

10 On February 27, 2019, Respondents filed their Post-Hearing Response Brief.

11 On February 28, 2019, the Division filed its Post-Hearing Reply Brief.

## 12 **II. Brief Summary**

13 The Division alleges that grounds exist to revoke Bailey's license as an investment adviser  
14 representative and API's license as an investment adviser pursuant to A.R.S. § 44-3201. Specifically,  
15 the Division argues that Bailey's license should be revoked because he failed to comply with an  
16 arbitration award arising out of a dispute within the securities industry and that Respondents' licenses  
17 should be revoked because in filings with the Commission they failed to disclose Bailey's 2013 and  
18 2014 bankruptcies, failed to disclose the arbitration award, failed to file a supplemental statement  
19 showing material changes, failed to file information required by the IM Act, and because it is in the  
20 public's best interest.

## 21 **III. Testimony**

### 22 **A. Shannon Nelson**

23 Ms. Nelson testified that she is an Investigator III for the Division who was assigned to  
24 investigate this case and maintain the case file.<sup>1</sup> Ms. Nelson testified that Bailey currently resides in  
25 Arizona and at all times relevant to this matter lived in Arizona.<sup>2</sup>

26 Ms. Nelson testified that Bailey is employed by API and that API is located in Arizona.<sup>3</sup> Ms.

27 <sup>1</sup> Tr. 23:4-5; Tr. 24:19-23.

28 <sup>2</sup> Tr. 25:3-8; Tr. 27:4-10; Respondents' Answer and Separate Statement of Undisputed Facts ("Answer") at 2.

<sup>3</sup> Tr. 27:14-21.

1 Nelson testified that API's Articles of Organization, dated January 7, 2009, was executed by Bailey  
2 and lists Bailey and Judith L. Bailey as its only two members.<sup>4</sup> Ms. Nelson further testified that API's  
3 Articles of Amendment, dated May 6, 2009, removed Judith L. Bailey as a member, and that since May  
4 7, 2009, Bailey has been API's only member.<sup>5</sup>

5 Ms. Nelson testified that from May 7, 2015, to March 1, 2018, API was an investment adviser  
6 and that it is currently licensed with the Commission as an investment adviser.<sup>6</sup> Ms. Nelson further  
7 testified that from May 7, 2015, to March 1, 2018, Bailey was approved as an investment adviser  
8 representative and that he is currently licensed with the Commission as an investment adviser  
9 representative.<sup>7</sup>

10 Ms. Nelson testified that on September 12, 2013, Bailey filed a voluntary petition for  
11 bankruptcy in the United States Bankruptcy Court, District of Arizona.<sup>8</sup> Ms. Nelson further testified  
12 that Bailey admitted in his Answer that the case was dismissed in December 2013.<sup>9</sup>

13 Ms. Nelson testified that on February 28, 2014, Bailey filed another voluntary petition for  
14 bankruptcy in the United States Bankruptcy Court, District of Arizona.<sup>10</sup> Ms. Nelson further testified  
15 that Bailey admitted in his Answer that the case was dismissed in October 2014.<sup>11</sup>

16 Ms. Nelson testified that Bailey submitted a Form U4 Uniform Application for Securities  
17 Industry Registration or Transfer ("Form U4") to the Commission on June 11, 2014.<sup>12</sup>

18 Ms. Nelson testified that, in response to Form U4 question 14(K)(1), which asks whether Bailey  
19 had filed a bankruptcy petition in the last ten years, Bailey answered "No."<sup>13</sup> Ms. Nelson further  
20 testified that although Bailey had filed for bankruptcy twice in the 12 months prior to June 11, 2014,  
21 Bailey filed an amendment to his Form U4 on six occasions between June 25, 2014, and June 22, 2015,  
22 and that on each occasion he answered "No" to question 14(K)(1).<sup>14</sup>

23 <sup>4</sup> Tr. 31:5-25; Exh. S-65a.

24 <sup>5</sup> Tr. 35:20-36:14; Exh. S-65b.

25 <sup>6</sup> Tr. 37:17-38:2; Exh. S-1.

26 <sup>7</sup> Tr. 38:6-15; Exh. S-2.

27 <sup>8</sup> Tr. 43:3-25; Exh. S-5.

28 <sup>9</sup> Tr. 44:5-11; Exh. S-9; Answer at 2.

<sup>10</sup> Tr. 44:15-45:19; Exh. S-13.

<sup>11</sup> Tr. 45:20-46:3; Exh. S-17; Answer at 2.

<sup>12</sup> Tr. 46:7-16; Exh. S-21.

<sup>13</sup> Tr. 47:9-15; Exh. S-21.

<sup>14</sup> Tr. 47:1-4; Tr. 47:16-52:12; Exhs. S-22, S-23, S-24, S-25, S-26, and S-27.

1 Ms. Nelson testified that Bailey, on behalf of API, submitted to the Commission a Form ADV  
 2 Uniform Application for Investment and Adviser Registration and Report by Exempt Reporting  
 3 Advisers ("Form ADV") on June 10, 2014.<sup>15</sup> Ms. Nelson testified that Bailey, on behalf of himself  
 4 and API, submitted a Form ADV Part 2B Supplemental Brochure ("Form ADV Part 2B") in June  
 5 2014.<sup>16</sup>

6 Ms. Nelson testified that under Section VII(B) Bankruptcy-Related Matters of the Form ADV  
 7 Part 2B filed in June 2014, Bailey wrote "During the past ten years, Mr. Bailey has not been the subject  
 8 of a bankruptcy petition."<sup>17</sup> Ms. Nelson further testified that Bailey filed additional Form ADV Part  
 9 2Bs on three occasions between February and April 2015, and that on each occasion under Section  
 10 VII(B) he wrote "During the past ten years, Mr. Bailey has not been the subject of a bankruptcy  
 11 petition."<sup>18</sup> Ms. Nelson further testified that Bailey filed additional Form ADV Part 2Bs on three more  
 12 occasions between June 2015 and June 2017, and that on each occasion he didn't include any  
 13 disclosures regarding his bankruptcies.<sup>19</sup>

14 Ms. Nelson testified that on December 5, 2011, Donald and Rosemary McDonald  
 15 ("McDonalds") filed a Statement of Claim initiating arbitration proceedings against NEXT Financial  
 16 Group, Inc. ("NEXT") and Bailey, pursuant to the Financial Industry Regulatory Authority ("FINRA")  
 17 Code of Arbitration Procedure for Customer Disputes ("Arbitration").<sup>20</sup>

18 Ms. Nelson testified that on June 26, 2013, the attorney for the McDonalds sent a letter to  
 19 FINRA advising that NEXT had been dismissed from the Arbitration ("June 26, 2013, letter").<sup>21</sup> Ms.  
 20 Nelson further testified that the June 26, 2013, letter states that the dismissal does not affect Bailey.<sup>22</sup>

21 Ms. Nelson testified that on July 1, 2013, Michele Collins, case manager at FINRA, sent Bailey  
 22 a copy of a letter to "Mr. Dunipace" advising that NEXT has been removed as an active party from the  
 23 Arbitration.<sup>23</sup> Ms. Nelson further testified that the June 26, 2013, letter was enclosed and that Bailey

24 <sup>15</sup> Tr. 55:3-16; Exh. S-29.

25 <sup>16</sup> Tr. 55:17-56:5; Exh. S-57.

<sup>17</sup> Tr. 57:14-18; Exh. S-57.

26 <sup>18</sup> Tr. 57:19-59:19; Exhs. S-58, S-59, and S-60.

<sup>19</sup> Tr. 59:20-63:6; Exhs. S-61, S-62, and S-63.

27 <sup>20</sup> Tr. 66:19-67:20; Exh. S-10(b).

<sup>21</sup> Tr. 78:12-19; Exh. S-64.

28 <sup>22</sup> Tr. 78:19-20; Exh. S-64.

<sup>23</sup> Tr. 79:12-81:1; Exh. S-43.

1 was listed at the bottom of the page “under where it says ‘CC.’”<sup>24</sup>

2 Ms. Nelson testified that on September 5, 2013, Bailey was personally served with a Notice of  
3 Claimants [sic] Request to Initiate Default Proceedings Against Respondent Bailey as part of the  
4 Arbitration.<sup>25</sup>

5 Ms. Nelson testified that on December 23, 2013, the McDonalds filed a Complaint to Determine  
6 Dischargeability of a Debt against Bailey and that Bailey was served a copy of the Complaint by mail  
7 on December 24, 2013.<sup>26</sup>

8 Ms. Nelson testified that on March 4, 2014, and March 13, 2014, Bailey was mailed copies of  
9 letters from FINRA regarding the Arbitration.<sup>27</sup>

10 Ms. Nelson testified that the McDonalds filed a Complaint to Determine Dischargeability of a  
11 Debt against Bailey and that Bailey was served a copy of the Complaint by mail on March 17, 2014.<sup>28</sup>  
12 Ms. Nelson further testified that Bailey filed an Answer to this Complaint.<sup>29</sup>

13 Ms. Nelson testified that on January 20, 2015, Bailey was mailed a copy of Claimants’ Second  
14 Request to Reinstate Default Proceedings Against Respondent Bailey as part of the Arbitration.<sup>30</sup>

15 Ms. Nelson testified that on May 20, 2015, Ms. Collins sent Bailey a copy of the FINRA Dispute  
16 Resolution Award (“Arbitration Award”).<sup>31</sup>

17 Ms. Nelson testified that on November 5, 2015, FINRA sent Bailey a letter advising him that  
18 his registration had been suspended for failing to comply with the Arbitration Award.<sup>32</sup>

19 Ms. Nelson testified that on May 19, 2017, the McDonalds filed in Maricopa County Superior  
20 Court an Application to Conform Arbitration Award, which included a copy of the Arbitration Award.<sup>33</sup>  
21 Ms. Nelson further testified that on May 23, 2017, Bailey was personally served with this Application.<sup>34</sup>

22 Question 14(I)(1)(b) of Form U4 asks, “Have you ever been named as a respondent/defendant  
23

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24 *Id.*

25 Tr. 81:13-82:15; Exh. S-44.

26 Tr. 82:19-84:19; Exh. S-10(a).

27 Tr. 84:24-86:9; Exhs. S-45 and S-46.

28 Tr. 86:17-88:22; Exh. S-14.

29 Tr. 89:2-14; Exh. S-15.

30 Tr. 89:23-90:19; Exh. S-49.

31 Tr. 96:9-98:1; Exh. S-37.

32 Tr. 99:8-100:3; Exh. S-39.

33 Tr. 90:20-91:1; Tr. 100:7-22; Exh. S-40.

34 Tr. 101:1-102:1; Exh. S-41.



1 in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were  
 2 *involved* in one or more *sales practice violations* and which resulted in an arbitration award or civil  
 3 judgment against you, regardless of amount.”<sup>35</sup>

4 Question 14(I)(4)(b) of Form U4 asks, “Have you ever been the subject of an *investment-*  
 5 *related*, consumer-initiated arbitration claim or civil litigation which alleged that you were *involved* in  
 6 one or more *sales practice violations*, and which resulted in an arbitration award or civil judgment  
 7 against any named respondent(s)/defendant(s), regardless of amount.”<sup>36</sup>

8 Ms. Nelson testified that, in response to Form U4 questions 14(I)(1)(b) and 14(I)(4)(b), Bailey  
 9 answered “No.”<sup>37</sup>

10 Ms. Nelson testified that Bailey filed an amendment to his Form U4 on six occasions between  
 11 June 25, 2014, and June 22, 2015, and that on each occasion he answered “No” to questions 14(I)(1)(b)  
 12 and 14(I)(4)(b).<sup>38</sup> Ms. Nelson further testified that Bailey has never amended his Form U4 to disclose  
 13 the Arbitration Award.<sup>39</sup>

14 Section XIX(D)(1) of Form ADV Part 2A requires management persons to disclose to the  
 15 Commission if they have “been involved in an award or otherwise have been found liable in an  
 16 arbitration claim alleging damages in excess of \$2,500 involving any of the following matters:

- 17 • An investment or an investment-related business or activity;
- 18 • Fraud, false statements, or omissions;
- 19 • Theft, embezzlement, or other wrongful taking of property;
- 20 • Bribery, forgery, counterfeiting, or extortion; or
- 21 • Dishonest, unfair, or unethical practices.<sup>40</sup>

22 Section XIX(D)(2) of Form ADV Part 2A requires management persons to disclose to the  
 23 Commission if they have “been involved in an award or otherwise have been found liable in a civil,  
 24 SRO, or administrative proceeding involving any of the following matters:

25 \_\_\_\_\_  
 26 <sup>35</sup> Exh. S-21.

<sup>36</sup> *Id.*

<sup>37</sup> Tr. 102:2-12; Tr. 103:1-11; Exh. S-21.

<sup>38</sup> Tr. 103:24-109:19; Exhs. S-22, S-23, S-24, S-25, S-26, and S-27.

<sup>39</sup> Tr. 109:23-110:1.

<sup>40</sup> Exhs. S-51, S-52, S-53, S-54, S-55, and S-56.

- An investment or an investment-related business or activity;
- Fraud, false statements, or omissions;
- Theft, embezzlement, or other wrongful taking of property;
- Bribery, forgery, counterfeiting, or extortion; or
- Dishonest, unfair, or unethical practices.<sup>41</sup>

Ms. Nelson testified that Bailey, on behalf of API, submitted a Form ADV Part 2A on six occasions between June 2014 and June 2017, and that on each occasion under Sections XIX(D)(1) and XIX(D)(2), Bailey did not disclose the Arbitration Award.<sup>42</sup>

Ms. Nelson testified that she concluded that Bailey, and not someone acting on his behalf, submitted each Form U4 and Form ADV in this matter because Bailey is listed as the undersigned for the digital signature.<sup>43</sup> Ms. Nelson further testified that regardless of who “physically pushed the enter button,” the registration and license is in Bailey’s name and that “he should be reviewing that information prior to final submittal.”<sup>44</sup>

Ms. Nelson testified that on six occasions prior to May 20, 2015, when the Arbitration Award was signed, Bailey correctly answered Form U4 question 14(I) regarding the Arbitration because it was pending.<sup>45</sup>

Ms. Nelson testified that on the Form U4 filed on June 22, 2015, instead of answering “Yes” to question 14(I)(1)(b), Bailey answered “Yes” to question 14(I)(1)(d), which asked whether Bailey had ever settled an arbitration or civil litigation, on or after May 18, 2009, for an amount of \$15,000 or more.<sup>46</sup>

Ms. Nelson testified that on twelve occasions prior to May 20, 2015, Bailey correctly answered the inquires on Form ADV regarding the Arbitration because Form ADV only asks about final arbitration awards and not pending arbitrations.<sup>47</sup>

Ms. Nelson testified that on the Form U4 filed on June 11, 2014, under section 15B

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<sup>41</sup> *Id.*

<sup>42</sup> Tr. 110:2-122:23; Exhs. S-51, S-52, S-53, S-54, S-55, and S-56.

<sup>43</sup> Tr. 129:15-131:21; Tr. 132:17-133:4; Exhs. S-29 at ACC000336 and S-21 at ACC000178.

<sup>44</sup> Tr. 146:23-147:9.

<sup>45</sup> Tr. 133:20-135:24; Tr. 136:18-137:9; Tr. 138:4-21; Exhs. S-21, S-22, S-23, S-24, S-25, and S-26.

<sup>46</sup> Tr. 138:22-140:17; Exh. S-27.

<sup>47</sup> Tr. 140 18-142:2; Exhs. S-29, S-30, S-31, S-32, S-51, S-52, S-53, S-54, S-57, S-58, S-59, and S-60.



1 *Firm/Appropriate Signatory* Representations, Bailey is the listed signatory.<sup>48</sup>

2 **B. William Bailey**

3 Bailey testified that he hired Capital Markets Compliance, and interacted with Amy Adams, to  
4 assist him in complying with licensing procedures.<sup>49</sup> Bailey further testified that he spoke on the phone  
5 with Ms. Adams to discuss the questions on the Form U4 filed on June 11, 2014, and that Ms. Adams  
6 submitted this form and each Form U4 filed before May 20, 2015, to the Division.<sup>50</sup>

7 Bailey testified that on the Form U4 filed on June 22, 2015, after he became aware of the  
8 Arbitration Award, Ms. Adams changed the answers to question 14(I)(a) from “Yes” to “No” (which  
9 asks if he is involved in a pending arbitration) and 14(I)(d) from “No” to “Yes” (which asks if he ever  
10 settled an arbitration, on or after May 18, 2009, for an amount of \$15,000 or more) in order to disclose  
11 the Arbitration.<sup>51</sup> Bailey further testified that he should have answered “Yes” to question 14(I)(b)  
12 (which asks if an arbitration resulted in an award against him) instead of “Yes” to question 14(I)(d).<sup>52</sup>

13 Bailey testified that in June 2015 he hired a new compliance company, Capital Markets IQ, and  
14 worked with Penelope Turnbow.<sup>53</sup> Bailey further testified that Ms. Turnbow submitted each Form U4  
15 and Form ADV filed after June 2015.<sup>54</sup>

16 Bailey testified that he does not believe he falsely answered Form U4 question 14(K)(1), which  
17 asks whether Bailey had filed a bankruptcy petition in the last ten years, despite his admission to this  
18 allegation in the Answer.<sup>55</sup> Bailey further testified that he does not believe he falsely represented in  
19 his Form ADVs that “During the past ten years, [he] has not been the subject of a bankruptcy petition,”  
20 despite his admission to this allegation in the Answer.<sup>56</sup>

21 Bailey testified that he agrees he is ultimately responsible for making sure that the information  
22 in the applications and disclosures is accurate.<sup>57</sup>

23  
24 <sup>48</sup> Tr. 148:11-149:12; Exh. S-21.

25 <sup>49</sup> Tr. 154:25-155:21.

26 <sup>50</sup> Tr. 156:16-157:22; Tr. 159:7-161:15; Exh. S-21.

27 <sup>51</sup> Tr. 161:16-162:16; Exh. S-27.

28 <sup>52</sup> Tr. 162:25-163:7; Exh. S-27.

<sup>53</sup> Tr. 164:19-165:1.

<sup>54</sup> Tr. 165:2-11.

<sup>55</sup> Tr. 166:21-168:4.

<sup>56</sup> *Id.*

<sup>57</sup> Tr. 179:16-20.

Bailey testified that he was made aware of the Arbitration Award shortly after it was signed on May 20, 2015, when he received a letter from the McDonalds' attorney.<sup>58</sup>

#### IV. Legal Argument

The Division argues that grounds exist to revoke Bailey's license as an investment adviser representative and API's license as an investment adviser pursuant to A.R.S. § 44-3201<sup>59</sup> because

<sup>58</sup> Tr. 186:20-187:4.

<sup>59</sup> A.R.S. § 44-3201 provides:

A. After a hearing or notice and an opportunity for a hearing as provided in article 7 of this chapter, the commission may enter an order suspending for a period of not more than one year, denying or revoking the license of an investment adviser or investment adviser representative if the commission finds that it is in the public interest and any one or a combination of the following:

1. The application for licensure of the investment adviser or investment adviser representative, any financial statement, document or other exhibit filed with an application or any supplement or amendment to an application is incomplete, inaccurate or misleading.
2. The investment adviser is insolvent or is in an unsound financial condition.
3. The investment adviser or investment adviser representative violates this chapter or any rule or order of the commission adopted or issued under this chapter.
4. The investment adviser or investment adviser representative fails to file with the commission any record, report, financial statement or other information required under this chapter or any rule or order of the commission adopted or issued under this chapter or refuses to permit an examination pursuant to section 44-3132.
5. The investment adviser knowingly retains an unlicensed investment adviser representative who is required to be licensed under this chapter.
6. The investment adviser permits any person to render investment advice in violation of this chapter.
7. The investment adviser representative is not employed by a licensed or federal covered adviser.
8. The investment adviser or investment adviser representative has been convicted within ten years preceding the date of filing an application for licensure as an investment adviser or investment adviser representative, or at any time after the date of filing an application, of a felony or misdemeanor involving a transaction in securities, of which fraud is an essential element or arising out of the conduct of any business involving securities or any aspect of the securities business.
9. The investment adviser or investment adviser representative is permanently or temporarily enjoined by order, judgment or decree of an administrative tribunal or a court of competent jurisdiction from engaging in or continuing any conduct or practice involving a violation of any federal or state securities laws or a violation of any other regulatory licensing requirements.
10. The investment adviser or investment adviser representative is subject to an order of an administrative tribunal, an SRO or the SEC denying, revoking or suspending membership, licensure or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for at least six months.
11. The investment adviser or investment adviser representative has been found civilly or criminally liable, by any court of competent jurisdiction or other governmental authority in a civil or criminal action not subsequently reversed, suspended or vacated, for any fraudulent act or practice in connection with any aspect of the securities business.
12. The investment adviser fails to reasonably supervise its investment adviser representatives or employees to assure their compliance with this chapter.
13. The investment adviser or investment adviser representative engages in dishonest or unethical practices in the securities industry.

Bailey failed to comply with the Arbitration Award<sup>60</sup> and because Respondents failed to disclose Bailey's 2013 and 2014 bankruptcies, failed to disclose the Arbitration Award, failed to file a supplemental statement showing material changes, failed to file information required by the IM Act, and because it is in the public's best interest.

Respondents request that the Commission deny the Division's revocation request and administer only a brief suspension of their respective licenses.

**A. Failure to Comply with the Arbitration Award**

Under A.R.S. § 44-3201(A)(13), the Commission may enter an order suspending for a period of not more than one year, denying, or revoking the license of an investment adviser representative if the Commission finds it is in the public interest and the investment adviser representative engages in dishonest or unethical practices in the securities industry. The Division asserts that "dishonest or unethical practices" within the meaning of A.R.S. § 44-3201(A)(13) includes failing to comply with an arbitration award issued in connection with doing business as a securities salesman.<sup>61</sup>

The Division contends that Bailey's non-compliance with the Arbitration Award is grounds to

14. The investment adviser or investment adviser representative engages in dishonest or unethical practices in business or financial matters.

B. In addition to denying, revoking or suspending the license, if the commission finds that an investment adviser or investment adviser representative has engaged in an act, practice or transaction described in subsection A, paragraph 6, 12 or 13, the commission may do one or more of the following:

1. Assess administrative penalties.
2. Order the investment adviser or investment adviser representative to cease and desist from engaging in the act, practice or transaction or doing any other act in furtherance of the act, practice or transaction.
3. Take appropriate affirmative action, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction, including a requirement to provide restitution.

C. If the investment adviser is a partnership, corporation, unincorporated association, limited liability company or trust, it is sufficient cause for denial of licensure if a member of the partnership, an officer or director of the corporation or unincorporated association, a manager of a limited liability company, a trustee or any other fiduciary of a trust or a person controlling, controlled by or under common control with the investment adviser has been found civilly or criminally liable, by any court of competent jurisdiction or other governmental authority in a civil or criminal action not subsequently reversed, suspended or vacated, for any act or omission that would be sufficient grounds for denying the licensure of an individual investment adviser.

D. If the license of an investment adviser or investment adviser representative is revoked or denied, that investment adviser or investment adviser representative may not file with the commission for licensure under this chapter or for registration under chapter 12 of this title for at least one year from the date of the revocation or denial.

<sup>60</sup> At the beginning of the hearing the Division moved to amend Paragraph 26(a) of the Notice to include this allegation. Respondents did not object and the motion was granted.

<sup>61</sup> Division's Post-Hearing Brief at 14.

1 revoke his license because the Arbitration Award was issued in connection with doing business as a  
 2 securities salesman.<sup>62</sup> The Division argues that the Arbitration Award was issued as a result of a dispute  
 3 that arose in connection with Bailey's business activities as the McDonalds' securities salesman while  
 4 Bailey was employed with NEXT and registered with the Commission as a securities salesman.<sup>63</sup>

5 The Division contends that in the Arbitration, the McDonalds alleged that Bailey engaged in  
 6 various misconduct including violating Arizona's securities fraud statute (A.R.S. § 44-1991),<sup>64</sup>  
 7 unsuitable transactions, excessive trading or churning, unsuitable investment strategy, omitting  
 8 material facts, and professional negligence.<sup>65</sup> A default award was entered against Bailey, assessing  
 9 \$397,731 in compensatory damages, \$52,269 in punitive damages, \$118,800 in attorney's fees, \$5,500  
 10 in expert witness fees, and \$375 in filing fees.<sup>66</sup> FINRA subsequently suspended Bailey's registration  
 11 for failure to comply with the Arbitration Award, and the Division contends that the Arbitration Award  
 12 remains unpaid.<sup>67</sup>

13 Respondents do not dispute that the Arbitration Award was issued in connection with doing  
 14 business as a securities salesman or that the award remains unpaid. However, Respondents note that  
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16 <sup>62</sup> *Id.*

17 <sup>63</sup> Division's Post-Hearing Brief at 15.

18 <sup>64</sup> A.R.S. § 44-1991 provides:

19 A. It is a fraudulent practice and unlawful for a person, in connection with a transaction or  
 20 transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase  
 21 of securities, including securities exempted under section 44-1843 or 44-1843.01 and including  
 22 transactions exempted under section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any  
 23 of the following:

- 24 1. Employ any device, scheme or artifice to defraud.
- 25 2. Make any untrue statement of material fact, or omit to state any material fact necessary  
 26 in order to make the statements made, in the light of the circumstances under which they  
 27 were made, not misleading.
- 28 3. Engage in any transaction, practice or course of business which operates or would  
 operate as a fraud or deceit.

B. In a private action brought pursuant to subsection A, paragraph 2 of this section or section 44-  
 1992, if the person who offered or sold the security proves that any portion or all of the amount  
 recoverable under subsection A, paragraph 2 of this section or section 44-1992 represents an amount  
 other than the depreciation in value of the subject security resulting from the part of the prospectus  
 or oral communication, with respect to which the liability of the person is asserted, not being true  
 or omitting to state a material fact required to be stated or necessary to make the statement not  
 misleading, then the amount shall not be recoverable. This subsection does not apply to any actions  
 based on allegations of activities constituting dishonest or unethical practices in the securities  
 industry.

<sup>65</sup> Division's Post-Hearing Brief at 15.

<sup>66</sup> Exh. S-36.

<sup>67</sup> Division's Post-Hearing Brief at 15; Exh. S-39.

1 “Bailey even paid his 2016 and 2017 FINRA registration fees, which were accepted without any  
 2 reference to his suspension for non-payment of the arbitration award.”<sup>68</sup> Respondents further argue  
 3 that the “allegations from the FINRA arbitration . . . should [not] be persuasive, especially since the  
 4 arbitration award was granted in a ‘default’ proceeding with no opposition to the claims or adjudication  
 5 of the facts.”<sup>69</sup>

6 Pursuant to A.A.C. R14-6-203(18), “Dishonest and unethical practices, with respect to  
 7 investment advisers and investment adviser representatives subject to A.R.S. § 44-3201(A)(13), shall  
 8 include...[f]ailing to comply with any arbitration award issued in connection with doing business as an  
 9 investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S.  
 10 Title 44, Chapter 12.” The allegations from the Arbitration are relevant in so far as they establish that  
 11 the behavior occurred in connection with doing business as an investment adviser representative or a  
 12 securities salesman. The Arbitration Award states that the McDonalds asserted the following causes  
 13 of action; breach of fiduciary duty, professional negligence, unsuitable transactions, violation of  
 14 Arizona securities fraud statutes, excessive trading and churning, failure to supervise, respondeat  
 15 superior, and Arizona control person liability.<sup>70</sup> The Arbitration Award further states that the causes  
 16 of action relate to the McDonalds’ investments in various unspecified variable annuities and mutual  
 17 funds.<sup>71</sup> Uncontested allegations that result in a default award are considered admitted,<sup>72</sup> and Bailey’s  
 18 failure to appear or contest the allegations does not negate that his actions occurred within the securities  
 19 industry.

20 We agree with the Division that Bailey’s failure to comply with the Arbitration Award  
 21 constitutes “dishonest or unethical practices in the securities industry” within the meaning of A.R.S. §  
 22 44-3201(A)(13).

### 23 **B. Failure to Disclose 2013 and 2014 Bankruptcies**

24 Under A.R.S. § 44-3201(A)(1), the Commission may enter an order suspending for a period of  
 25 not more than one year, denying, or revoking the license of an investment adviser or an investment

26 <sup>68</sup> Respondents’ Post-Hearing Response Brief at 2.

27 <sup>69</sup> Respondents’ Post-Hearing Response Brief at 3.

28 <sup>70</sup> Exh. S-36 at 1-2.

<sup>71</sup> Exh. S-36 at 2.

<sup>72</sup> See, e.g., *Collister v. Inter-state Fidelity Bldg. & Loan Ass’n of Utah*, 44 Ariz. 427 (1934).



adviser representative if the Commission finds it is in the public interest and the application for licensure of the investment adviser or investment adviser representative, any financial statement, document or other exhibit filed with an application or any supplement or amendment to an application is incomplete, inaccurate or misleading. The Division contends that Bailey's application for licensure as an investment adviser representative and API's application for licensure as an investment adviser were inaccurate and misleading with respect to Bailey's prior bankruptcies.

On September 12, 2013, Bailey filed a voluntary petition for bankruptcy in the United States Bankruptcy Court, District of Arizona, which was subsequently dismissed on December 18, 2013.<sup>73</sup> On February 28, 2014, Bailey filed another voluntary petition for bankruptcy in the United States Bankruptcy Court, District of Arizona, which was subsequently dismissed on October 16, 2014.<sup>74</sup>

The Division contends that Bailey falsely represented that he had not filed a bankruptcy petition in the last ten years when, in his Form U4 submitted on June 11, 2014, he answered "No" to question 14(K)(1).<sup>75</sup> The Division further contends that Bailey continued to falsely deny the bankruptcies in six subsequent filings of Form U4.<sup>76</sup>

The Division contends that Bailey and API falsely represented, in the Form ADV Part 2B submitted on June 6, 2014, that Bailey had not been the subject of a bankruptcy petition in the last ten years.<sup>77</sup> The Division further contends that Bailey and API continued to falsely deny the bankruptcies in three subsequent filings of Form ADV Part 2B.<sup>78</sup>

Respondents contend that Bailey hired a compliance company and dealt with Ms. Adams to facilitate the application process by filling out forms and submitting them to the Commission.<sup>79</sup> Respondents further contend that during the process Bailey discussed with Ms. Adams his prior two bankruptcy filings and that she determined neither were reportable on the application forms and thus, "[r]ight or wrong, . . . his application reflected such."<sup>80</sup> Respondents argue that "the reasons for the

<sup>73</sup> Exhs. S-5 and S-9.

<sup>74</sup> Exhs. S-13 and S-17.

<sup>75</sup> Division's Post-Hearing Brief at 16; Exh. S-21.

<sup>76</sup> Division's Post-Hearing Brief at 16; Exhs. S-22, S-23, S-24, S-25, S-26, and S-27.

<sup>77</sup> Division's Post-Hearing Brief at 21; Exh. S-57.

<sup>78</sup> Division's Post-Hearing Brief at 21; Exhs. S-58, S-59, and S-60.

<sup>79</sup> Respondents' Post-Hearing Response Brief at 1.

<sup>80</sup> *Id.*



1 bankruptcy dismissal were . . . presented [by the Division] merely to taint [Bailey's] character, and  
2 should not be a factor with respect to the issues in this matter."<sup>81</sup>

3 The Division argues that Bailey's attempts to justify or excuse the false representations only  
4 serve to undermine his credibility.<sup>82</sup> The Division contends that Bailey testified that the bankruptcies  
5 were dismissed because he had too much income or assets, and that he had told his compliance  
6 counselor the same.<sup>83</sup> The Division argues, however, that the 2013 bankruptcy proceeding was  
7 dismissed because Bailey failed to make required spousal support payments and that the 2014  
8 bankruptcy was dismissed because he had too much debt, was in default on his interim payments, and  
9 otherwise failed to comply with the Trustee's Recommendation.<sup>84</sup>

10 While we agree with Respondents that the reasons for the bankruptcy dismissals do not factor  
11 into our determination of appropriate action, we also find that Respondents' reliance on a compliance  
12 company does not excuse their failure to answer the questions accurately. We agree with Ms. Nelson  
13 that it does not matter who "physically push[es] the enter button" and that Respondents are ultimately  
14 responsible for the accuracy and truthfulness of all information provided to the Commission. The  
15 evidence shows that Bailey filed for bankruptcy in 2013 and 2014 and that his Form U4s do not disclose  
16 this fact.

17 We agree with the Division that Bailey's application for licensure as an investment adviser  
18 representative and API's application for licensure as an investment adviser were inaccurate with respect  
19 to Bailey's prior bankruptcies within the meaning of A.R.S. § 44-3201(A)(1).

20 **C. Failure to Disclose Arbitration Award**

21 The Division contends that Bailey's amended application for licensure as an investment adviser  
22 representative and API's amended applications for licensure as an investment adviser were inaccurate  
23 and misleading with respect to Bailey's Arbitration Award.

24 On May 20, 2015, the Arbitration Award was issued.<sup>85</sup> On August 9, 2017, a judgment in  
25

26 <sup>81</sup> Respondents' Post-Hearing Response Brief at 3.

27 <sup>82</sup> Division's Post-Hearing Brief at 16.

28 <sup>83</sup> Division's Post-Hearing Brief at 16; Tr. 168:18-21; Tr. 169:12-14; Tr. 172:23-173:10.

<sup>84</sup> Division's Post-Hearing Brief at 16; Exhs. S-9 and S-17.

<sup>85</sup> Exh. S-36.

1 Maricopa County Superior Court was entered against Bailey confirming the Arbitration Award.<sup>86</sup>

2 The Division contends that when, in his Form U4 submitted on June 22, 2015, Bailey answered  
3 “No” to questions 14(I)(1)(b) and 14(I)(4)(b), he falsely represented that he had never been subject of  
4 or named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil  
5 litigation which resulted in an arbitration award or civil judgment in the last ten years.<sup>87</sup> The Division  
6 further contends that Bailey has not filed an amended Form U4 which discloses the Arbitration Award  
7 by correctly answering questions 14(I)(1)(b) and 14(I)(4)(b).<sup>88</sup>

8 The Division contends that Bailey and API falsely represented, in the Form ADV Part 2As  
9 submitted in February 2016 and June 2017, that Bailey had not been involved in or found liable in an  
10 arbitration claim alleging damages in excess of \$2,500 or a civil, SRO, or administrative proceeding  
11 involving investment-related activity; fraud; false statements or omissions; or dishonest, unfair, or  
12 unethical practices.<sup>89</sup> The Division further contends that Bailey and API have not filed an amended  
13 Form ADV, Part 2A, or any other filing with the Commission, which discloses the Arbitration Award.<sup>90</sup>

14 The Division contends that Bailey represented in his Answer and during the hearing that he  
15 believed that NEXT settled the entire Arbitration and that he was unaware that the Arbitration  
16 continued against him.<sup>91</sup> The Division argues that this explanation is contradicted by the record and  
17 Bailey’s own testimony.<sup>92</sup> The Division argues that by June 22, 2015, Bailey had been notified at least  
18 8 times via filings and correspondence that the Arbitration continued against him.<sup>93</sup> The Division  
19 further argues that, during the hearing, Bailey admitted he was aware of the Arbitration Award prior to  
20 June 22, 2015.<sup>94</sup>

21 Respondents contend that during the application process in 2014-2015, Bailey’s Form U4  
22 reflected that he was a respondent in a pending investment related arbitration involving sales practice  
23 violations and that Bailey was unaware that an adverse arbitration award was obtained against him until

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24 <sup>86</sup> Exh. S-42.

25 <sup>87</sup> Division’s Post-Hearing Brief at 17; Exh. S-27.

26 <sup>88</sup> Division’s Post-Hearing Brief at 17.

27 <sup>89</sup> Division’s Post-Hearing Brief at 22, Exhs. S-55 and S-56.

28 <sup>90</sup> Division’s Post-Hearing Brief at 22.

<sup>91</sup> Division’s Post-Hearing Brief at 17.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

1 after his application was approved.<sup>95</sup> Respondents further contend that Bailey testified that he thought  
2 the Arbitration was settled by his former employer/broker-dealer and he was not cognizant of the reality  
3 until the award was domesticated in Arizona as a judgment in August 2017.<sup>96</sup>

4 We find that there is sufficient evidence that Bailey was aware of the Arbitration Award prior  
5 to filing his Form U4 on June 22, 2015, and filing two Form ADVs between February 2016 and June  
6 2017. Bailey testified that he received a letter regarding the Arbitration Award from the McDonalds'  
7 attorney shortly after it was issued and that he was aware of the Arbitration Award prior to June 22,  
8 2015.<sup>97</sup> Bailey further testified that on the Form U4 filed on June 22, 2015, question 14(I)(1)(d) was  
9 erroneously checked and that question 14(I)(1)(b) was not properly checked.<sup>98</sup> The evidence shows  
10 that Bailey failed to properly disclose the Arbitration Award in his filings with the Commission after  
11 May 20, 2015.

12 We find that Bailey's amended application for licensure as an investment adviser representative  
13 and API's amended application for licensure as an investment adviser were inaccurate with respect to  
14 Bailey's Arbitration Award within the meaning of A.R.S. § 44-3201(A)(1).

15 **D. Failure to File Supplemental Statement Showing Material Changes and Information**  
16 **Required by the IM Act**

17 Under A.R.S. § 44-3201(A)(3), the Commission may enter an order suspending for a period of  
18 not more than one year, denying, or revoking the license of an investment adviser or an investment  
19 adviser representative if the Commission finds it is in the public interest and the investment adviser or  
20 investment adviser representative violated Title 44, Chapter 13 of Arizona Revised Statutes or any rule  
21 or Commission order adopted or issued. The Division contends that Respondents violated A.R.S. §  
22 44-3159(A)(1)<sup>99</sup> by failing to file a supplemental statement regarding the Arbitration Award and  
23

24 <sup>95</sup> Respondents' Post-Hearing Response Brief at 2.

25 <sup>96</sup> *Id.*

26 <sup>97</sup> Tr. 161:19-24; Tr. 186:18-187:4.

27 <sup>98</sup> Tr. 162:25-163:19; Exh. S-27.

28 <sup>99</sup> A.R.S. § 44-3159 provides:

A. In order to retain licensure, licensed investment advisers and investment adviser representatives shall file the following with the commission through the IARD:

1. A supplemental statement showing any material changes in the facts contained in the original application for licensure as supplemented or amended as the changes occur or within thirty days after the change.

1 Bailey's suspension by FINRA within 30 days after those material changes occurred.<sup>100</sup>

2 Under A.R.S. § 44-3201(A)(4), the Commission may enter an order suspending for a period of  
3 not more than one year, denying, or revoking the license of an investment adviser or an investment  
4 adviser representative if the Commission finds it is in the public interest and the investment adviser or  
5 investment adviser representative fails to file with the Commission any record, report, financial  
6 statement or other information required under Title 44, Chapter 13 of Arizona Revised Statutes or any  
7 rule or Commission order adopted or issued. The Division contends that Respondents violated A.R.S.  
8 § 44-3159(A)(1) by failing to file a supplemental statement regarding the Arbitration Award within 30  
9 days after this material change occurred.<sup>101</sup>

10 The Division argues that the Arbitration Award constitutes a material change for several  
11 reasons. First, the significance of any consumer-initiated arbitration is apparent from the "Disclosure  
12 Questions" portion of Form U4, which includes eight questions on consumer-initiated arbitrations,  
13 including two specific questions as to arbitration awards.<sup>102</sup> Second, the Arbitration Award resulted  
14 from claims of fraud, breach of fiduciary duty, negligence, and dishonest and unethical practices such  
15 as unsuitable transactions and excessive trading.<sup>103</sup> Third, because the Arbitration Award imposed a  
16 large monetary award based on claims of egregious conduct, it would be especially significant to a  
17

18 2. If a licensed investment adviser requires payment of advisory fees six months or more  
19 in advance and in excess of five hundred dollars for each client, an audited balance sheet  
20 as of the end of the investment adviser's fiscal year. Each balance sheet shall be:

- 21 a. Prepared in conformity with generally accepted accounting principles and  
22 examined in accordance with generally accepted auditing standards.
- 23 b. Audited by an independent certified public accountant.

24 B. If the IARD does not provide for receipt of a filing, the filing may be made with the commission  
25 by mail or any other reasonable method that is acceptable to the commission.

26 C. The financial statements prescribed in subsection A shall be filed with the commission within  
27 ninety days after the end of the investment adviser's fiscal year.

28 D. Any licensed investment adviser that has its principal place of business in another state is exempt  
from the requirements prescribed in subsection A if all of the following apply:

- 1. The investment adviser is registered as an investment adviser with the state in which it  
maintains its principal place of business.
- 2. The investment adviser has complied with the financial reporting requirements, if any,  
of the state in which it maintains its principal place of business.
- 3. If prescribed by the commission, the investment adviser files with the commission a  
copy of the financial reports it files with the state in which it maintains its principal place  
of business.

<sup>100</sup> Division's Post-Hearing Brief at 18-19, 22-23.

<sup>101</sup> Division's Post-Hearing Brief at 19, 23.

<sup>102</sup> Division's Post-Hearing Brief at 18.

<sup>103</sup> Division's Post-Hearing Brief at 18-19.

1 reasonable investor.<sup>104</sup>

2 Respondents contend that Bailey relied on individuals in the compliance department of every  
3 firm that he had been associated with to file or submit requisite annual licensure documents, including  
4 the updated Form ADV and Form U4.<sup>105</sup>

5 As we have previously stated, Respondents' reliance on a compliance company to fill out forms  
6 and submit them to the Commission does not excuse their failure to supplement the forms with required  
7 information. We find that Respondents, within the meaning of A.R.S. §§ 44-3201(A)(3) and 44-  
8 3201(A)(4), violated A.R.S. § 44-3159(A)(1) by failing to file a supplemental statement regarding the  
9 Arbitration Award and Bailey's suspension by FINRA within 30 days after those material changes  
10 occurred.

11 **E. Public Interest**

12 The Division argues that it is in the public interest to revoke Respondents' licenses for three  
13 main reasons. First, the Division contends that Bailey has demonstrated a pattern of dishonest and  
14 unethical conduct in the securities industry by having an award issued against him involving claims of  
15 unsuitable transactions, fraud, negligence, and breach of fiduciary duty; and then refusing to comply  
16 with the Arbitration Award.<sup>106</sup> Second, the Division contends that Respondents' have shown a pattern  
17 of dishonest attempts to conceal material and unfavorable information from regulators and clients by  
18 repeatedly making false statements on their Form U4s and Form ADVs regarding Bailey's 2013 and  
19 2014 bankruptcies and the Arbitration Award.<sup>107</sup> Third, the Division contends that revocation of  
20 Respondents' licenses serves the purpose of the IM Act by preventing harm to others, by preventing  
21 further dishonest and unethical conduct, and by serving as a deterrent to others in the securities  
22 industry.<sup>108</sup>

23 Respondents argue that revocation is the harshest penalty for failure to disclose material  
24 information on the Form ADVs and Form U4s.<sup>109</sup> Bailey submits that his omissions were inadvertent

25 \_\_\_\_\_  
26 <sup>104</sup> Division's Post-Hearing Brief at 19.

27 <sup>105</sup> Respondents' Post-Hearing Response Brief at 2.

28 <sup>106</sup> Division's Post-Hearing Brief at 20.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Respondents' Post-Hearing Response Brief at 2.

1 and unintentional, and that his disclosures provided ample notice to clients and potential clients of his  
 2 prior FINRA suspension, his employment termination for violations, and pending customer complaint,  
 3 thus affording the “protection” that the public is entitled to.<sup>110</sup>

4 While we agree that revocation of Respondents’ licenses is the harshest penalty, the allegations  
 5 against Respondents are not merely that they failed to disclose or supplement material information on  
 6 the Form ADVs and Form U4s, but also that Bailey has failed to comply with the Arbitration Award.  
 7 Failure to comply with the Arbitration Award alone justifies revocation of Respondents’ licenses  
 8 pursuant to A.R.S. § 44-3201(A)(13). Under the circumstances, and considering all the allegations and  
 9 evidence, we agree with the Division that revocation of Respondents’ licenses is in the public’s best  
 10 interest.

11 \* \* \* \* \*

12 Having considered the entire record herein and being fully advised in the premises, the  
 13 Commission finds, concludes, and orders that:

#### 14 **FINDINGS OF FACT**

- 15 1. At all relevant times, Bailey was a resident of Arizona.
- 16 2. API is a member-managed limited liability company organized by Bailey on January 7,  
 17 2009, and located in Maricopa County, Arizona.<sup>111</sup> Bailey became the sole member of API in May  
 18 2009.<sup>112</sup>
- 19 3. Prior to being licensed with the Commission as an investment adviser representative in  
 20 association with API, Bailey was registered with the Commission as a salesman in association with  
 21 NEXT.<sup>113</sup>
- 22 4. On December 5, 2011, the McDonalds initiated the Arbitration against Bailey and  
 23 NEXT by submitting a Statement of Claim with FINRA.<sup>114</sup>

26 <sup>110</sup> Respondents’ Post-Hearing Response Brief at 3.

27 <sup>111</sup> Exh. S-65a.

<sup>112</sup> Exh. S-65b.

<sup>113</sup> Exh. S-4.

28 <sup>114</sup> Exh. S-10b.



1           5.       On or about June 26, 2013, the McDonalds' attorney advised FINRA that NEXT was  
2 dismissed from the Arbitration.<sup>115</sup>

3           6.       On or about July 1, 2013, FINRA sent a letter to Bailey that enclosed the June 26, 2013,  
4 letter and stated that the arbitration would proceed against Bailey.<sup>116</sup>

5           7.       On September 12, 2013, Bailey filed a voluntary petition for bankruptcy in the United  
6 States Bankruptcy Court, District of Arizona, which was subsequently dismissed on December 18,  
7 2013.<sup>117</sup>

8           8.       On February 28, 2014, Bailey filed a voluntary petition for bankruptcy in the United  
9 States Bankruptcy Court, District of Arizona, which was subsequently dismissed on October 16,  
10 2014.<sup>118</sup>

11          9.       On June 10, 2014, API submitted a Form ADV, Part 2B, and in response to Item 7(B)  
12 represented that "During the past ten years, Mr. Bailey has not been the subject of a bankruptcy  
13 petition(s)."<sup>119</sup>

14          10.      Between February 2015 and April 2015, Bailey submitted amended Form ADV, Part  
15 2Bs on three occasions and on each amended Form ADV, Part 2B he represented that "During the past  
16 ten years, Mr. Bailey has not been the subject of a bankruptcy petition(s)."<sup>120</sup>

17          11.      On June 11, 2014, Bailey submitted a Form U4 and incorrectly answered "No" to  
18 question 14(K)(1), which asked whether he had filed a bankruptcy petition in the last ten years.<sup>121</sup>

19          12.      Between June 25, 2014, and June 22, 2015, Bailey submitted amended Form U4s on six  
20 occasions and on each amended Form U4 he incorrectly answered question 14(K)(1).<sup>122</sup>

21          13.      On May 7, 2015, API became licensed with the Commission as an investment adviser  
22 and Bailey became licensed with the Commission as an investment adviser representative in association  
23 with API.<sup>123</sup>

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24 <sup>115</sup> Exh. S-64.

25 <sup>116</sup> Exh. S-43.

26 <sup>117</sup> Exhs. S-5 and S-9.

27 <sup>118</sup> Exhs. S-13 and S-17.

28 <sup>119</sup> Exh. S-57.

<sup>120</sup> Exhs. S-58, S-59, and S-60.

<sup>121</sup> Exh. S-21.

<sup>122</sup> Exhs. S-22, S-23, S-24, S-25, S-26, and S-27.

<sup>123</sup> Exhs. S-3 and S-4.

1           14.     On May 20, 2015, as a result of a default proceeding, the Arbitration Award was issued  
2 against Bailey.<sup>124</sup>

3           15.     The Arbitration Award states that the McDonalds asserted the following causes of  
4 action; breach of fiduciary duty, professional negligence, unsuitable transactions, violation of Arizona  
5 securities fraud statutes, excessive trading and churning, failure to supervise, respondeat superior, and  
6 Arizona control person liability.<sup>125</sup>

7           16.     The Arbitration Award states that the causes of action relate to the McDonalds'  
8 investments in various unspecified variable annuities and mutual funds.<sup>126</sup>

9           17.     The Arbitration Award found that Bailey is solely liable for \$397,731 in compensatory  
10 damages, \$52,269 in punitive damages, \$118,800 in attorney's fees, \$5,500 in expert witness fees, and  
11 \$375 in filing fees.<sup>127</sup>

12           18.     On May 20, 2015, FINRA sent Bailey two letters notifying him of the Arbitration  
13 Award, enclosing a copy of the Arbitration Award, and notifying him of his responsibility to pay the  
14 monetary award.<sup>128</sup>

15           19.     During the hearing in this matter, Bailey testified that, shortly after the Arbitration  
16 Award was issued, he received a letter from the McDonalds' attorney advising him of the Arbitration  
17 Award.<sup>129</sup>

18           20.     On November 5, 2015, FINRA notified Bailey by mail that his registration was  
19 suspended for failure to comply with the Arbitration Award.<sup>130</sup>

20           21.     On February 24, 2016, and June 8, 2017, API submitted Form ADV, Part 2As, and did  
21 not disclose the Arbitration Award.<sup>131</sup>

22           22.     On August 9, 2017, a judgment in Maricopa County Superior Court was entered against  
23 Bailey confirming the Arbitration Award.<sup>132</sup>

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24 <sup>124</sup> Exh. S-36.

25 <sup>125</sup> *Id.*

26 <sup>126</sup> *Id.*

27 <sup>127</sup> *Id.*

28 <sup>128</sup> Exh. S-37.

<sup>129</sup> Tr. 186:18-187:4.

<sup>130</sup> Exh. S-39.

<sup>131</sup> Exhs. S-55 and S-56.

<sup>132</sup> Exh. S-42.

23. These findings of fact are based upon the Discussion above, which is incorporated herein.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained above are incorporated herein.

3. Bailey's conduct is grounds for revocation of his investment adviser representative license pursuant to A.R.S. §§ 44-3201(A)(1), (A)(3), (A)(4), and (A)(13).

4. API's conduct is grounds for revocation of its investment adviser license pursuant to A.R.S. §§ 44-3201(A)(1), (A)(3), and (A)(4).

**ORDER**

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-3201, Respondent William Austin Bailey's license as an investment adviser representative is revoked from the effective date of this Decision.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-3201, Respondent Associated Professional Investments, LLC's license as an investment adviser is revoked from the effective date of this Decision.

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1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application, the  
 2 Commission may grant a rehearing of this Order. The application must be received by the Commission  
 3 at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing  
 4 an application for rehearing does not stay this Order. If the Commission does not grant a rehearing  
 5 within twenty (20) calendar days after filing the application, the application is considered to be denied.  
 6 No additional notice will be given of such denial.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10  
11   
CHAIRMAN BURNS

11   
COMMISSIONER DUNN

11   
COMMISSIONER KENNEDY

12  
13   
COMMISSIONER OLSON

13   
COMMISSIONER MÁRQUEZ PETERSON



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
 Executive Director of the Arizona Corporation Commission,  
 have hereunto set my hand and caused the official seal of the  
 Commission to be affixed at the Capitol, in the City of Phoenix,  
 this 6 day of February 2020.

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27  
28

  
 MATTHEW J. NEUBERT  
 EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
 BDS/gb

1 SERVICE LIST FOR:

WILLIAM AUSTIN BAILEY and ASSOCIATED  
PROFESSIONAL INVESTMENTS, LLC

2 DOCKET NO.:

S-21021A-17-0256

3  
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